IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
WRIT PETITION NO. 8687 OF 2004

Ranjit Dattatraya Shingare.
....Petitioner.
Vs.

The Collector of Solapur and 7 ors.
....Respondents.

Mr. B.V. Bukhari for the Petitioner.

Mr.S.G. Kudle for the Respondent No.6.

Mr. K.S. Bapat for the Respondent No.3.

CORAM: H.L.GOKHALE &
R.S.MOHITE, JJ.

DATED: 30/11/2004.

PC:

1. Heard Mr. Bukhari in support of this petition. Government Pleader represents for Respondent Nos. 1 and 2 and has been served. Mr. Bapat appears for respondent No.3-Kurduwadi Nagarparishad. The respondent Nos. 4 and 5 are Labour and Industrial courts respectively. Mr. Kudle appears for respondent Nos. 6. Respondent No.7 has also been served. The State of Maharashtra has been served through the office of the Government Pleader.

2. The petitioner herein seeks to challenge two orders first being one passed by the District Collector of Solapur dated 6.7.2002 and the second one being order passed by the Commissioner and Regional Director, Municipal Administration dated 6.6.2003. The Collector of Solapur has passed the order invoking powers under Section 308 of the Maharashtra Municipal Councils,

Nagar Panchayats and Industrial Townships Act, 1965. That order stayed the recruitment of the petitioner as Health Inspector in Kurduwadi Nagar Parishad. The order passed by the Commissioner is an order in an appeal filed by the petitioner herein under Section 318 of that Act and the appeal came to be dismissed.

3. Short facts leading to the petitioner's case are that the the petitioner claimed to have applied for the post of Health Inspector which was earlier occupied by his father. He applied for the said post as project affected person and then acting Chief Officer of the Municipal Council of Kurduwadi applied for the names being forwarded by the Employment Exchange. Five names were forwarded and thereafter, the petitioner came to be selected. The case of the respondent No.6 is that he is in clerical category and he was sent for training for the post of Sanitary Inspector by the Municipal Council and he has completed his training. According to him, he should have been appointed for the said post and the entire exercise adopted by the Chief Officer is malafide exercise in collusion with the retired father of the petitioner and the then acting Chief Officer of the Municipal Council. The Collector has accepted the submissions that the appointment of the petitioner was an irregular and illegal one and that the vacancy was

not filled after selection by the Selection Committee which is required to be done under Section 76(3) of the said Act. Mr. Bukhari, learned counsel for the petitioner submitted that the Collector did not have such powers which he has exercised under Section 308 of the said Act and relied upon the Judgment of the Division Bench in the case of **Prakash Kutik Choudhary Vs. The Collector of Dhule and others reported in 1989(58) FLR 835.** Without prejudice to these submissions, however, Mr. Bukhari submitted that the petitioner will have no objection to a course of action namely that the Chief Officer to look into the appointment of the petitioner as to whether it was irregular or illegal one and in the event same was found to be irregular and illegal, the said post be filled in accordance with law wherein the claim of the petitioner should also be considered. In our view the suggestion is quite fair. Mr. Bapat appearing for the Chief Officer of the Municipal Council seeks directions to that effect. Accordingly, we direct the Chief Officer to hold an appropriate enquiry as to whether the appointment of the petitioner was irregular and illegal. It will be open to the petitioner to make available himself for the said enquiry. Enquiry will consider whether the post was for project affected person and that his name was rightly recommended and

selected by the Section Committee. The Chief Officer will hold enquiry and come to the conclusion within two months from today. In the event, the Chief Officer find that the appointment was irregular and illegal, the post will be filled in accordance with law and rules and after considering the claim of all the persons who come in the zone of consideration. Mr. Kudle appearing for Respondent No.6 submitted that the respondent No.6 also be permitted to apply for the said post and appear before the Selection Committee. That will be so if the respondent No.6 comes within the zone of consideration.

4. We make it clear that until the first determination i.e. enquiry in respect of appointment of the petitioner as irregular and illegal one is done and thereafter until second selection for the said post is made by following proper procedure, till then officiating posting of the petitioner as Health Inspector to continue. The second exercise will be done within eight weeks after coming to the conclusion in the first determination.

5. Petition stands disposed of.

6. All concerned to act on a copy of this order duly

authenticated by the Sheristedar/C.S. of this court.

(H.L.GOKHALE, J.)

(R.S. MOHITE, J.)

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